

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT NONRULE POLICY DOCUMENT

Title: **Transportation Conformity Determination for Nonattainment and Maintenance Areas**

Identification Number: **Air-018-NPD**

Date Originally Adopted: **June 1, 1998**

Dates Revised: **None**

Other Policies Repealed or Amended: **None**

Brief Description of Subject Matter: **Provides guidelines for conformity determination in light of new federal amendments.**

Citations Affected: **326 IAC 19-2**

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. A revision to this nonrule policy document may be put into effect by IDEM once the revised nonrule policy document is made available for public inspection and copying. IDEM will submit revisions to the Indiana Register for publication.

The purpose of this nonrule policy document is to clarify IDEM's policy with respect to enforcement of 326 IAC 19-2, Transportation Conformity For Nonattainment and Maintenance Areas.

Background

IDEM has commenced a rulemaking action to amend 326 IAC 19-2, Transportation Conformity to Federal and State Implementation Plans, by incorporating by reference the third set of federal amendments, "Transportation Conformity Rule Amendments: Flexibility and Streamlining." 62 FR 43780, August 15, 1997. This third set of amendments streamlines duplicative requirements and adds flexibility in conformity determinations.

Section 176(c) of the Clean Air Act as amended in 1990, requires that transportation plans, programs, and projects conform to the state air quality implementation plan and establishes the criteria and procedures for determining whether or not they do. Conformity to the air quality plan requires that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. Typically, metropolitan planning organizations complete the conformity determinations required for transportation planning activities. IDEM reviews, comments on and, ultimately, concurs in the conformity determination. The Federal Highway Administration issues the final conformity determination.

The third set of federal amendments allows flexibility in methods of conformity determination. For example, the build/no-build test and other emission reduction tests are eliminated once a control strategy plan or air quality maintenance plan has been submitted to the United States Environmental Protection Agency (U.S.EPA) and the motor vehicle emissions budget has been found adequate for conformity purposes. U.S.EPA has forty-five (45) days after a state air quality implementation plan submission to complete an adequacy review.

The existing state rule does not provide the flexibility of the third set of federal amendments currently being incorporated. In light of the current rulemaking, it is the intention of IDEM to exercise its enforcement discretion in regard to conformity determinations conducted using the newly amended federal requirements where they are inconsistent with current state requirements.

Policy

For the reasons stated above, IDEM intends to exercise its enforcement discretion and will not bring an enforcement action against any person or entity for failure to comply with existing state transportation conformity rules and requirements where they are inconsistent with the newly amended federal transportation conformity rule, 62 FR 43780, August 15, 1997.

This policy is effective through November 1, 1998 or until the amendments to 326 IAC 19-2 are effective; whichever occurs first.